

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRIAN ZAHN,

Plaintiff,

v.

DR. FRANCIS J. HARVEY, Acting
Secretary, Department of
Army,

Defendant.

NO. CV-03-0356-EFS

**ORDER GRANTING THE UNITED
STATES' MOTION TO STRIKE
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND REQUESTS FOR
JUDICIAL NOTICE**

Before the Court, without oral argument, are Plaintiff Brian Zahn's Motion for Summary Judgment (Ct. Rec. 169), Plaintiff's Request for Judicial Notice (Ct. Rec. 173), and Defendant Francis J. Harvey's Motion to Strike Plaintiff's Motion for Summary Judgment and Request for Judicial Notice (Ct. Rec. 176). The Court recognizes these motions are not fully briefed; however, the Court finds further briefing is unnecessary. The Court grants the Government's motion and denies as moot Plaintiff's motions for the reasons given below.

A. Plaintiff's Motion for Summary Judgment

Plaintiff's Motion for Summary Judgment filed on July 11, 2008, is untimely because the dispositive motion deadline has long expired. The most recent Scheduling Order (Ct. Rec. 167) filed on January 9, 2008,

1 recognized the expiration of the dispositive motion deadline by setting
2 forth only trial-related dates and deadlines. Plaintiff's dispositive
3 motion and memorandum fail to establish a reason for hearing a
4 dispositive motion on this late date - trial is set for October 27, 2008.
5 Accordingly, the Government's motion to strike Plaintiff's dispositive
6 motion is granted.

7 At trial, Plaintiff may pursue the following claims: (1) retaliation
8 claims in connection with the issuance of the "do not report to work"
9 instructions and the dissemination of medical information in January 2001
10 under Title VII (overtime grievance) and under the Rehabilitation Act
11 (RA), Americans with Disabilities Act (ADA), and RCW 49.60 *et seq.* if
12 Plaintiff was considered disabled by Defendant; and (2) a disability-
13 related claim that Defendant, if found to have considered Plaintiff
14 disabled, failed to engage in an interactive process to find reasonable
15 accommodation(s) under the RA, ADA, and RCW 49.60 *et seq.* Plaintiff may
16 not argue, nor present evidence, that Defendant retaliated against him
17 by subverting the arbitration hearing, forcing him to retire, lowering
18 the quality of the office space or equipment, disclosing personal medical
19 information during 2000, failing to pay him for his attendance at the
20 arbitration hearing, or retaining an armed guard.

21 **B. Plaintiff's Request for Judicial Notice**

22 Plaintiff asks the Court to take judicial notice of a number of
23 "facts" pursuant to Federal Rule of Evidence 201. The Court finds taking
24 judicial notice of these "facts" is inappropriate because they are
25 subject to reasonable dispute. Accordingly, Plaintiff's request is
26 denied.

1 **C. Conclusion**

2 For the reasons given above, **IT IS ORDERED:**

3 1. Defendant Francis J. Harvey's Motion to Strike Plaintiff's
4 Motion for Summary Judgment and Request for Judicial Notice (**Ct. Rec.**
5 **176**) is **GRANTED**.

6 2. Plaintiff Brian Zahn's Motion for Summary Judgment (**Ct. Rec.**
7 **169**) is **DENIED AS MOOT** because it is stricken as untimely.

8 3. Plaintiff's Request for Judicial Notice (**Ct. Rec. 173**) is
9 **DENIED**.

10 **IT IS SO ORDERED.** The District Court Executive is hereby directed
11 to enter this Order and to furnish copies to Plaintiff and counsel.

12 **DATED** this 5th day of August 2008.

13
14 s/ Edward F. Shea
15 EDWARD F. SHEA
16 United States District Judge
17

18 Q:\Civil\2003\0356.strike.msj.notice.frm
19
20
21
22
23
24
25
26